(19) (11)

Nos. 03-1230 and 03-1234

In The

Supreme Court of the United States

AMERICAN TRUCKING ASSOCIATIONS, INC.
AND USF HOLLAND, INC.,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, *et al.*,

Respondents.

MID-CON FREIGHT SYSTEMS, INC., *et al.*,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, *et al.*,

Respondents.

On Writ Of Certiorari To The Michigan Court Of Appeals

REPLY BRIEF FOR PETITIONERS MID-CON FREIGHT SYSTEMS, INC., *et al.* No. 03-1234

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ARGUMENT

In their brief on the merits, Respondents attempt to shield the $100 Interstate Decal Fee from preemption by way of two recurring themes. First, Respondents focus on the use to which the fee revenues are put and portray Petitioners' claim as an assault on a State safety regulatory program unrelated to the Single State Registration System ("SSRS"). Second, Respondents suggest that the $100 fee is little more than a vehicle registration fee – again untouched by the SSRS – and justified by the Michigan license-plating of vehicles. Neither the use of the fee's revenues nor the Michigan plating of a truck, however, can obscure the fact that Michigan's exaction of the Interstate Decal Fee is a "registration requirement" in excess of the SSRS standards and is therefore preempted by 49 U.S.C. § 14504 ("Section 14504").

A. Michigan Law Imposes A "Registration Requirement" In Excess Of That Permitted By The SSRS, Notwithstanding The Use To Which The Interstate Decal Fee Revenues Are Put

1. At the outset, it should be made plain that this case does *not* involve a challenge to a State safety regulatory program. Rather, this case concerns the federal regulation of matters affecting interstate commerce, and what Petitioners challenge is Michigan's registration of interstate motor carriers in ways that conflict directly with the SSRS standards established by federal law. Under Section 14504, a State requirement that an interstate carrier must "register with the State" is not an unreasonable burden on interstate transportation when the "State registration" is completed under the SSRS standards; however, "[w]hen a State registration requirement imposes obligations in

excess of the standards . . . , the part in excess *is* an unreasonable burden [on interstate transportation]" and is consequently preempted. 49 U.S.C. § 14504(b) (emphasis supplied). Therefore, notwithstanding Michigan's later use of the funds, the operative question presented is whether assessment of the Interstate Decal Fee in the first instance is a prohibited "registration requirement" within the meaning of Section 14504.[1]

There is nothing unique about the use to which Interstate Decal Fee revenues are put. Indeed, Michigan's $10 SSRS fee itself, after first being designated in part to the Michigan Truck Safety Fund under Mich. Comp. Laws § 478.7(5), is combined with all other fee revenue collected by the Michigan Public Service Commission ("PSC") and assigned to the same "regulatory" purposes Respondents so heavily emphasize. J.A. 12; 28. So too, parenthetically, is a portion of Michigan's license-plating fee, but that fee would still be subject to legal challenge if it were not apportioned on a mileage basis because, under the International Registration Plan ("IRP"), plating fees must be apportioned no matter how the fees are used. *See* Mich. Comp. Laws § 257.801(1)(k) (assigning a $15 portion of plating fees to the Michigan Truck Safety Fund). *Compare*

[1] The reason for Respondents' talismanic invocation of a "truck safety" theme is transparent. They hope to obtain the benefit of a presumption against preemption applied when the historic police powers of the States are in question. *See United States v. Locke*, 529 U.S. 89, 108 (2000) (distinguishing regulatory arenas in which there has been a long history of significant federal presence); *City of Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 430 (2002) (applying an assumption that the police powers of the States are not preempted in interpreting an express safety exception to the provisions of 49 U.S.C. § 14501 otherwise preempting State regulation of intrastate motor carrier activities). This case poses no such question.

International Registration Plan, Art. III, § 300 (2004 rev.) (requiring apportionment of each IRP's State's vehicle registration fee) *with* Mich. Comp. Laws § 257.801g(1) (authorizing apportionment of plating fees under the IRP).

This Court long ago dismissed "the aberrational doctrine . . . that state law may frustrate the operation of federal law so long as the state legislature in passing its law had some purpose in mind other than one of frustration." *Perez v. Campbell*, 402 U.S. 637, 651-52 (1971). As the Court explained,

> such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy – other than frustration of the federal objective – that would be tangentially furthered by the proposed state law.

Id. at 652.[2] In short, "[w]hatever the purpose or purposes of the state law, pre-emption analysis cannot ignore the effect of the challenged state action on the pre-empted field." *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 107 (1992). The relevant inquiry in this case, therefore, is not whether Michigan's $100 fee is charged "for" a safety regulatory program or even "for" filing proof of insurance within the literal terms of Section 14504. What matters is whether the means,

[2] The Court's analysis refutes as immaterial Respondents' contention that "the Michigan Legislature expressly differentiated" between the "annual" Interstate Decal Fee and the SSRS "registration" fee when it set forth the effective date of statutory amendments in Mich. Comp. Laws § 478.8 (*Respondents' Brief* at 41).

manner, and incidence of the charge comply with what federal law demands.

2. Respondent's brief fails to address the mechanism by which the Interstate Decal Fee is assessed and thus disregards the obvious parallels between the Michigan fee-collection regime and the federal standards for SSRS registration. Those parallels reveal that the Michigan scheme imposes an interstate motor carrier "registration requirement" that mirrors – but conflicts with – the SSRS in four important ways.

First, although the SSRS authorizes State registration of interstate motor carriers, "a motor carrier is required to register annually with only one State," and "such single State registration shall be deemed to satisfy the registration requirements of *all* other States." 49 U.S.C. § 14504(c)(1)(A); (C) (emphasis supplied). Michigan law, however, requires all interstate motor carriers using Michigan-plated vehicles to register with the PSC – *i.e.*, to present and identify themselves on an additional PSC "Equipment List Form" – even if a motor carrier is properly SSRS-registered in another SSRS State.[3]

[3] As previously shown (*Petitioners' Brief* at 15, n.13), an interstate carrier may be SSRS-registered in one State while purchasing its license plates in another because, under 49 C.F.R. § 367.3, the "base" State for SSRS purposes is generally a carrier's *principal* place of business whereas, under the International Registration Plan, Art. II, §§ 210, 218 (2004 rev.), the "base" jurisdiction for IRP plating can be any State in which *a* place of business exists. In addition, an interstate carrier already SSRS-registered in Ohio may use leased motor vehicles that are plated by the lessor/owner in Michigan, in which event the interstate carrier must *also* register with the PSC on its Equipment List Form and pay the $100 fee on each leased vehicle. The Equipment

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Second, although the SSRS permits the collection of a per-truck fee in connection with interstate motor carrier registration, "only a State acting in its capacity as a registration State under [the] single State system may require a motor carrier . . . to pay directly to such State fee amounts in accordance with the fee system established [by Section 14504], subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system." 49 U.S.C. § 14504(c)(2)(A)(iii). Michigan, however, whether acting in its capacity as an SSRS registration State or participating State, collects its own per-truck fee for itself as an additional flat fee entry barrier to interstate operations on and over Michigan highways.

Third, while the SSRS directs States to identify for purposes of fee collection "the number of commercial motor vehicles the carrier operates in a State," it expressly prohibits the use of "decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier." 49 U.S.C. § 14504(c)(2)(B)(iii); (iv)(I). Michigan's PSC, however, requires interstate carriers using Michigan-plated trucks to schedule each truck by make, model, and serial number and to obtain a vehicle-identifying decal for each.

Fourth, the SSRS permits the collection of a "fee for each participating State that is . . . not to exceed $10 per vehicle" and declares that "[t]he charging or collection of *any* fee under this section that is not in accordance with the fee system established [herein] shall be deemed to be a

List Form may be viewed at <http://www.michigan.gov/mpsc> ("Motor Carrier: All Forms") (viewed April 13, 2005).

burden on interstate commerce," 49 U.S.C. § 14504(c)(2)(B)(iv)(III); (C) (emphasis supplied). Michigan, however, charges and collects a $100-per-vehicle fee from interstate carriers operating Michigan-plated trucks.

Although not expressly identified by the Michigan legislature as a charge "for" filing proof of insurance or registering a motor carrier's operating authority, the manner by which the Interstate Decal Fee is collected *is* quite literally a State "registration requirement" for interstate motor carriers that conflicts with Section 14504. In this regard, preemption analysis discerns legislative intent by applying logical, plain-meaning understandings to the effect of Congress's words. Thus, for example, a prohibition against cigarette advertising "requirements and prohibitions" quite naturally encompasses State laws regulating advertising content and location alike, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 548 (2001), and a preemptive strike against vehicle emissions "standards" is just as applicable to restrictions on vehicle purchases as it is to restrictions on sales. *Engine Manufacturers Ass'n v. South Coast Air Quality Management District*, 124 S.Ct. 1756, 1762 (2004). Likewise, Michigan's law requiring an interstate carrier to present and identify itself to the PSC and pay a per-truck fee "for" regulatory funding is just as much a "registration requirement" as is a law requiring the same carrier to identify itself to the same commission and make its per-truck payment "for" the filing of proof of insurance. Both procedures serve as the interstate carrier's registration – the securing of its ticket or pass into the State – and both are governed by Section 14504's broad preemptive sweep.

Michigan Comp. Laws § 478.7(4) provides evidence of the convenient "form over substance" nature of Respondents'

argument. That statutory provision, which assesses Michigan's $10 fee on interstate carriers, does not include any legislative directive that the fee is charged "for" filing of proof of insurance. Yet, Respondents identify Mich. Comp. Laws § 478.7(4) as the law through which "Michigan has complied with the SSRS" (*Respondents' Brief* at 47) even though the statute says nothing about insurance filings and makes no mention of the SSRS. *See also Schneider Nat'l Carriers, Inc. v. State*, 247 Mich.App. 716, 637 N.W.2d 838, 839-40 (2001), *vacated on other grounds*, 468 Mich. 862, 659 N.W.2d 228 (2003) (agreeing with Respondents that the PSC may collect the $10 charge as its SSRS fee even without express legislative direction authorizing collection of the fee "for" an insurance filing). Similarly, assessment of the $100 Interstate Decal Fee under Mich. Comp. Laws § 478.2(2) is no less a "registration requirement" merely because the statute makes no reference to proof of insurance.

3. As the United States observes (*U.S. Brief* at 22), even if the Interstate Decal Fee does not meet a narrow definition of a "registration requirement" expressly preempted by Section 14504, it is still impliedly preempted because it contravenes and frustrates the purpose of the SSRS, not to mention the more general regulatory authority of the Federal Motor Carrier Safety Administration ("FMCSA") to license the for-hire truck transportation of goods moving in interstate commerce.[4] On this point, w-

[4] The categories of preemption analysis are not "rigidly distinct." *English v. General Electric Co.*, 496 U.S. 72, 79 n.5 (1990). In addition, a declaration of express preemptive intent by Congress does not foreclose application of conflict preemption principles as well. *Compare Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992) (Congressional language "defining the pre-emptive reach of a statute implies

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may easily dismiss Respondents' comment that carriers can effectively comply with both state and federal law (*Respondents' Brief* at 38-39) because a finding of conflict preemption does not depend on the impossibility of concurrent compliance. *Geier*, 529 U.S. at 873. Instead, we need only note as we have before that a conflict exists because exaction of the Interstate Decal Fee "stands as an obstacle" to full implementation of the SSRS and otherwise frustrates the accomplishment of federal law. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Geier*, 529 U.S. at 873.

Respondents selectively emphasize only a portion of the legislative history for the predecessor "bingo card" program and overlook the legislative gloss attendant to the SSRS itself. Certainly, Congress was concerned about illegal trucking (largely because of the harm caused to authorized carriers) when the "bingo card" program was authorized in 1965, but it also sought to afford interstate carriers "relief from [a] multiplicity of different State registration requirements" by establishing a *uniform* registration procedure. H.R. Rep. No. 89-253 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2923, 2929. In addition, by the time the SSRS was adopted in 1991, the House Conferees were most concerned about industry estimates that the "bingo card" program was costing carriers "up to $250 million per year." H.R. Conf. Rep. No. 102-404 (1991),

that matters beyond that reach are not pre-empted") *with Freightliner Corp. v. Myrick*, 514 U.S. 280, 288 (1995) (distinguishing *Cipollone* and ruling that an express preemption clause does not "entirely foreclose[ ] any possibility of implied pre-emption"). *See also Geier v. American Honda Motor Co.*, 529 U.S. 861, 869 (2000) (ruling that neither an express preemption provision nor a saving clause bars application of ordinary conflict preemption rules).

reprinted in 1991 U.S.C.C.A.N. 1679, 1817.[5] Thus, the SSRS was implemented as a new "streamlined administrative process" "intended to benefit the interstate carriers by eliminating unnecessary compliance burdens" through a single State registration procedure. H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1817-1818. Perhaps most important is Section 14504 itself and its declaration of Congress's intent to "establish a fee system . . . that . . . *minimizes* the costs of complying with the [State] registration system . . . " by way of directive to the Secretary of Transportation. 49 U.S.C. § 14504(c)(2)(B)(iv)(II) (emphasis supplied).

Michigan's assessment of the Interstate Decal Fee conflicts directly with Congress's purpose. It establishes a *non-uniform* registration procedure different from that permitted by the SSRS, imposes an *additional* registration requirement on some carriers already SSRS-registered in other States, and most obviously *increases* interstate carrier costs by imposing a per-truck fee ten times the $10 fee cap established by federal law. Furthermore, the Michigan Court of Appeals decision upholding the fee invites other States to enact so-called "regulatory fees" and associated registration procedures standing as barricades to interstate trucking at borders throughout the country.

It is, in the end, commerce among the States that is at issue here, and it is Congress and its chosen designee – the FMCSA – that possess the constitutional authority to

[5] Indeed, the House Public Works and Transportation Committee originally proposed to preempt State registration of interstate carriers altogether, believing it to be a "costly mechanism which does not serve a purpose that justifies its cost." H.R. Rep. No. 102-171(I) (1991), *reprinted in* 1991 U.S.C.C.A.N. 1526, 1575.

regulate interstate commerce and authorize for-hire interstate trucking in and across the Nation. As a result, although Michigan has the unquestioned authority to oversee matters of highway safety within its boundaries, it may not invoke that authority to single out interstate carriers for imposition of burdensome registration requirements that block interstate commercial activity the FMCSA has sanctioned pursuant to federal law. *Cf. Castle v. Hayes Freight Lines, Inc.*, 348 U.S. 61, 64 (1954) (State size and weight laws may not be used to revoke or suspend a motor carrier's right to engage in federally-authorized interstate activities). The Interstate Decal Fee is not rescued by the use to which it is put because, whatever its purpose, it stands in direct conflict with Section 14504's declaration that any "registration requirement" exceeding the SSRS standards and any flat fee exceeding $10 per vehicle is a burden on interstate commerce.

B. Limiting The $100 Registration Requirement To Interstate Carriers Operating Michigan-Plated Trucks Does Not Save The Interstate Decal Fee From Preemption

1. In a further attempt to distinguish assessment of the Interstate Decal Fee from the carrier registration standards established by Section 14504, Respondents would have the Court view the flat $100 charge as a mere vehicle fee associated with the license-plating of trucks in Michigan. Michigan's fee-imposing procedure, however, is not mere vehicle registration. Rather, it is interstate *carrier* registration by the very motor carrier regulatory agency at which the SSRS mandate is directed. The United States is therefore unquestionably correct that Michigan's fee is "imposed on interstate carriers *by reason*

of their operation in interstate commerce" (*U.S. Brief* at 20) and is thus preempted by Section 14504.

That the Interstate Decal Fee is imposed upon interstate *carriers*, not vehicles, is evident from both the Michigan fee-imposing statute and the vehicle-leasing example described earlier (*supra* at 4, n.3). By its literal terms, Mich. Comp. Laws § 478.2(2) requires "[a] *motor carrier*" to pay the annual $100 fee "for each vehicle operated by the motor carrier which is registered in this State and operated entirely in interstate commerce." (Emphasis supplied). Thus, in a truck-leasing scenario, even if an interstate carrier is properly SSRS-registered in another State, Michigan law seeks out that carrier for registration on the PSC's Equipment List Form and requires a fee not from the truck owner/lessor purchasing license plates in Michigan, but from the interstate *motor carrier* leasing the trucks. And it is Michigan's PSC – the State's *motor carrier* regulatory body – that carries out the registration process and assesses the fee, potentially subjecting any non-complying interstate carrier to fines of up to $500 for each violation plus the PSC-impounding of vehicles and injunctive relief as well. *See* Mich. Comp. Laws §§ 479.12; 479.16; 479.19.

In contrast, *vehicle* registration in Michigan – including the plating of passenger cars and pick-up trucks and the IRP-plating of commercial motor vehicles operated by for-hire and private carriers alike – is administered by the Michigan Secretary of State, and *vehicle* registration requirements are generally imposed upon the vehicle *owner*. Mich. Comp. Laws § 257.217(1) ("owner of a vehicle that is subject to registration . . . shall apply to the Secretary of

State").[8] The Interstate Decal Fee, however, has nothing to do with vehicle ownership. Rather, the fee is imposed only on a for-hire interstate carrier as a condition of operating any vehicle in interstate commerce on Michigan highways and roads. Mich. Comp. Laws § 478.2(2) (requiring fee payment by the "motor carrier" "for each vehicle operated" "in interstate commerce"); § 478.7(1) (prohibiting interstate transportation unless for-hire carriers have "registered with the [PSC] and paid the required registration and vehicle fees").

2. Nor can the Interstate Decal Fee be justified as a "plating" fee based on Respondents' reference to the intrastate fee assessed under Mich. Comp. Laws § 478.2(1). Any notion that Mich. Comp. Laws § 478.2(1) and § 478.2(2) collectively impose a vehicle plating charge on all motor carrier vehicles is contradicted by Respondents' acknowledgment (*Respondents' Brief* at 44, n.7) that the $100 fee under Mich. Comp Laws § 478.2(1) is assessed against *all* intrastate-operating motor carriers regardless of the State in which their vehicles are plated. As Respondents explain in defense of *that* fee, Mich. Comp. Laws § 478.2(1) requires payment of the $100 intrastate fee "for the privilege of making intrastate deliveries" (*Respondents' Brief* at 21), not for the purchase of a license plate. The only logical construction of the statute, therefore, is that the fee under subsection (1) of Mich. Comp. Laws § 478.2 is charged because the carrier operates intrastate, while the fee under subsection (2) is levied because the carrier operates interstate. In other

[8] Under the IRP, rules do exist for permitting motor carriers using leased vehicles to assume the owner's vehicle plating obligation. *See generally* International Registration Plan, Art. IX, § 904 (2004 rev.).

words, the distinction between two motor carriers subjected to the separately-imposed fees is that the first is assessed *on account of* its intrastate operations and the second is assessed *on account of* its exclusively interstate activities.[7]

The statutory provisions *in pari materia* here do not include Mich. Comp. Laws § 478.2(1). Rather, the three statutes that should be read together begin with Mich. Comp. Laws § 478.7(1), which imposes a registration requirement upon all for-hire interstate carriers by prohibiting them from engaging in the interstate transportation of property in Michigan "without first having *registered* with the [PSC] and paid the required registration and vehicle fees." (Emphasis supplied). Next is Mich. Comp. Laws § 478.7(4), upon which the PSC bases the $10 registration and vehicle fee charged to interstate carriers operating trucks plated out of State. Finally there is Mich. Comp. Laws § 478.2(2), which requires a $100 registration and vehicle fee from interstate carriers using trucks plated in Michigan. Read together, the statutes demonstrate that, when the PSC registers for-hire interstate carriers, Michigan law complies with the $10 fee cap under Section 14504 for some – but not all – of those registrations.

In practice and effect, Michigan law requires registration and Interstate Decal Fee payment of Petitioners and their fellow class members because they operate in interstate commerce, which is exactly what Section 14504

[7] In addition, as the United States observes (*U.S. Brief* at 28), the charging of both fees on a flat per-truck basis demonstrates that neither fee can be construed as anything in the nature of a license-plating charge because plating fees must be apportioned under both the IRP and Michigan law.

prohibits unless carried out in accordance with the SSRS. The fact that only some interstate carriers (those using Michigan-plated trucks) are charged a fee exceeding the $10 federal fee cap does not mean that the SSRS is any less preemptive of Michigan law. *Cf. American Trucking Ass'ns v. Scheiner*, 483 U.S. 266, 282 (1987) (Pennsylvania's flat truck taxes discriminated against "*some* participants in interstate commerce" in contradiction of the dormant Commerce Clause) (emphasis supplied). Accordingly, even if the Michigan Court of Appeals ruling had acknowledged Respondents' theory that the Michigan plating of a truck creates a "presence"-related basis for the charge, limiting the $100 fee to interstate carriers operating trucks with Michigan plates does not save the fee from preemption.[8]

[8] Notably, Respondents do not take issue with our point (*Petitioners' Brief* at 27) that the IRP base-plating of a truck in any particular State has little to do with the truck's "presence" there. Also, it is not certain that Michigan always draws a clear line of demarcation between Michigan-plated carriers and those that plate their trucks elsewhere. Respondents take issue with our comment that the PSC "waives" the $10 SSRS fee for carriers operating Michigan-plated trucks, contending that under Mich. Comp. Laws § 478.7(4) the PSC's authority for the $10 fee is limited to carriers using trucks plated outside Michigan (*Respondents' Brief* at 40-41). Notwithstanding the Michigan Court of Appeals plain statement that the PSC "waives" the $10 fee on Michigan-plated trucks (J.A. 83, n.6) and despite the Michigan SSRS form's direction to Michigan-plated carriers to pay $100 in lieu of $10 (J.A. 67), it appears that Michigan permits other SSRS States to collect the $10 fee from *all* interstate carriers regardless of where their trucks are plated. A survey of SSRS forms used in the Midwest, for example, reveals that all interstate carriers, wherever their trucks are plated, are directed by Iowa, Kansas, Kentucky, and Ohio to pay $10 for each truck operated in Michigan. *See* <http://www.iadot forms.dot.state.ia.us/iowadotforms/Library.aspx> ("Blank Forms; Motor Carrier Services") (viewed April 13, 2005); <http://www.kcc.state.ks.us/trans/forms.htm> ("Kansas Trucking Application") viewed April 13,

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The Interstate Decal Fee, .therefore, is no better defended by its imposition upon a subgroup of interstate carriers than it is by the use to which it is put. Whether called a "plating charge" or a "regulatory fee," the $100 fee and its assessment are governed by Section 14504 because they serve to register motor carriers with the PSC for purposes of authorizing exclusively interstate activities in Michigan. Under Section 14504, Congress declared that non-conforming State registration requirements are a burden on interstate commerce and thereby made the SSRS standards preemptive in force and effect. Consequently, because it exceeds the SSRS standards, the $100 Interstate Decal Fee is preempted.

2005): <http://www.transportation.ky.gov/dmc/forms_applications.htm> ("Kentucky Transportation Application") (viewed April 13, 2005); <http://www.puco.ohio.gov/PUCO/IndustryTopics/Topic.cfm?doc_id=273> ("Interstate Single State Registration Packets – Property") (viewed April 13, 2005). *See Schneider*, 247 Mich.App. 716, 637 N.W.2d 838 (ordering $10 refunds to carriers that paid both $10 and $100 on the same vehicles). Therefore, it appears that some interstate carriers using Michigan-plated trucks are paying Michigan not $10 or $100, but $110 per truck annually, which cannot be squared with any of the statutory analysis or the anecdotal justification employed by Respondents in defense of Michigan's fees.

CONCLUSION

For the foregoing reasons, the decision of the Michigan Court of Appeals should be reversed.

Respectfully submitted,

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